

MDL 1570 PLAINTIFFS' EXECUTIVE COMMITTEES

In re: Terrorist Attacks on September 11, 2001 (S.D.N.Y.)

Plaintiffs' Executive Committee for Personal Injury and Death Claims	Plaintiffs' Executive Committee for Commercial Claims
Ronald L. Motley (1944-2013) Jodi Westbrook Flowers / Donald A. Migliori, <i>Co-Chairs</i> MOTLEY RICE LLC James P. Kreindler, <i>Co-Chair</i> KREINDLER & KREINDLER LLP	Stephen A. Cozen, <i>Co-Chair</i> Sean Carter, <i>Co-Chair</i> COZEN O'CONNOR
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VIA ECF

September 10, 2018

The Honorable Sarah Netburn
 U.S. Magistrate Judge
 United States District Court for the S.D.N.Y.
 Thurgood Marshall U.S. Courthouse, Room 430
 40 Foley Square
 New York, NY 10007

Re: *In Re: Terrorist Attacks on September 11, 2001, 03 MDL 1570 (GBD) (SN)*

Dear Judge Netburn:

We respectfully submit this letter-motion pursuant to Local Rule 37.2 and Individual Practice Rule § II.c. of this Court. Plaintiffs request permission to file a motion to compel production of documents from the Federal Bureau of Investigation (FBI) in accordance with their subpoena dated April 6, 2018 and *Touhy* requests. Given our prior attempts to resolve this matter with the Department of Justice (DOJ), plaintiffs believe that a preliminary conference would not be productive and would only result in further delay.

Plaintiffs have conferred in good faith with the DOJ in an effort to resolve this dispute without motion practice. The PECs and the DOJ have spent months corresponding and conferring regarding the FBI's production of responsive discovery. These attempts included direct communication between the PECs and U.S. Attorney Geoffrey Berman and culminated in a telephone conference between the PECs and Assistant U.S. Attorneys Sarah Normand, Esq. and Jeanette Vargas on August 17, 2018.

A formal motion is necessary for plaintiffs to properly brief the Court on the applicable law and to present the relevant facts.

As of the date of the filing of this motion, the FBI has failed to produce a single document in response to the subpoena, and has refused to inform the PECs what responsive documents it will produce in response to the subpoena. Further, the FBI has failed to state when

The Honorable Sarah Netburn
September 10, 2018
Page 2

it plans to begin producing documents in response to the subpoena, despite the passage of nearly five months since service of the subpoena and the PECs' extensive efforts to secure a commitment from the FBI. In addition, the FBI has not substantiated its objections based on proportionality and undue burden, and has not formally invoked government privileges or provided a privilege log substantiating its privilege objections, despite repeated requests by the PECs.

Plaintiffs can no longer wait for the FBI to produce the responsive documents and are thus compelled to seek relief from the Court. The FBI documents that will be addressed in plaintiffs' motion to compel are necessary to properly conduct the discovery in this case.

Respectfully submitted,

KREINDLER & KREINDLER LLP

MOTLEY RICE LLC

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For the Plaintiffs Exec. Committees

By: /s/ Robert T. Haefele
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